

PPP Modalities

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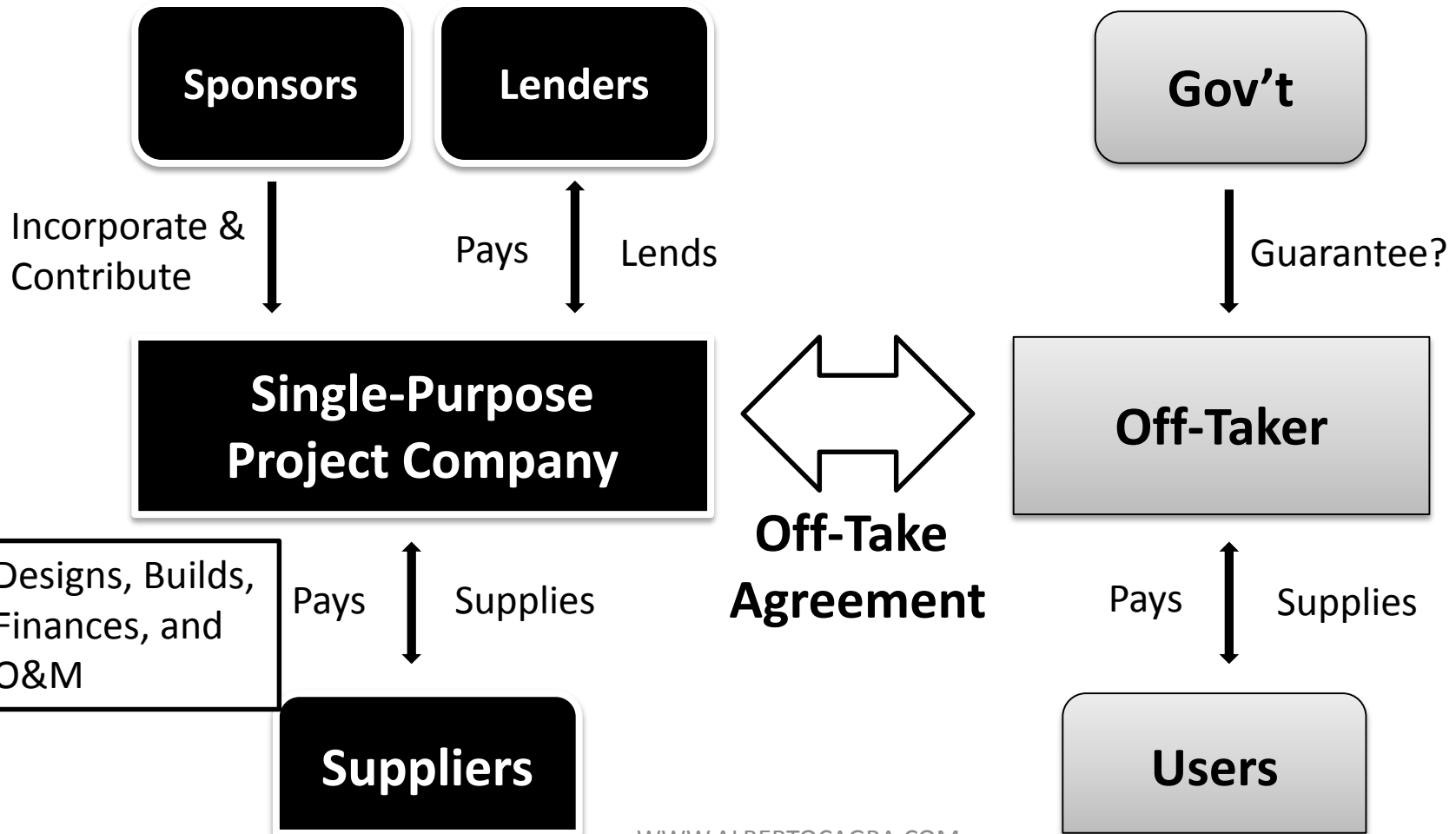
24+ PPP Modalities

1. Build-Transfer
2. Build-Lease-Transfer
3. Build-Operate-Transfer
4. Build-Own-Operate
5. Build-Transfer-Operate
6. Contract-Add-Operate
7. Develop-Operate-Transfer
8. Rehabilitate-Operate-Transfer
9. Rehabilitate-Own-Operate
10. Rehabilitate-Lease-Transfer*
11. Rehabilitate-Transfer*
12. Rehabilitate-Transfer-Operate*
13. Concession Arrangement
14. Joint Venture
15. Lease or Affermage
16. Management Contract
17. Management Contract (No Public Funds)
18. Service Contract
19. Service Contract (No Public Funds)
20. Divestment or Disposition
21. Corporatization
22. Subsidiary with Private Equity
23. Onerous Donation
24. Gratuitous Donation
25. Others

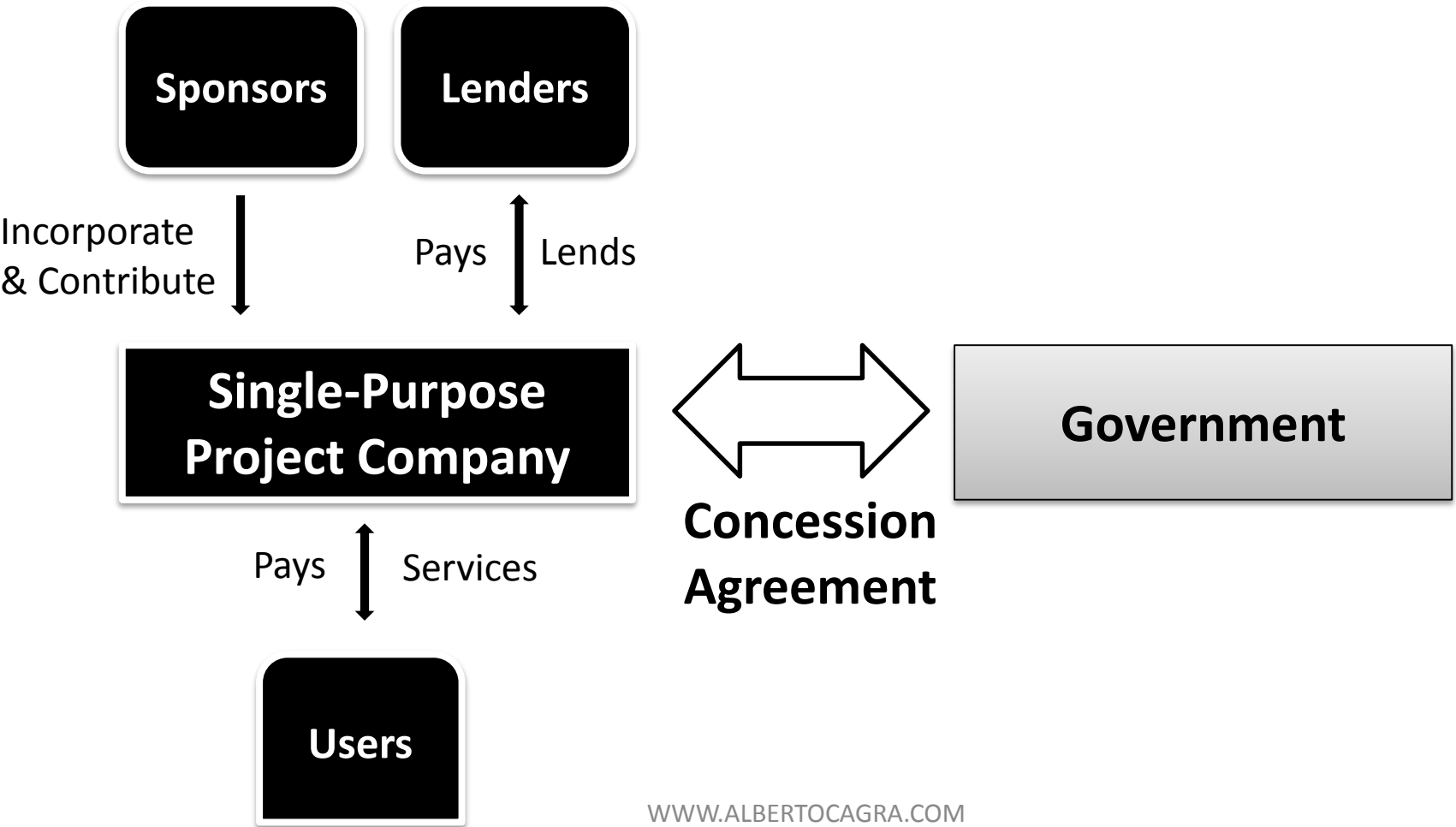
Governing Laws/ Rules

PPP Modality	Governing Law
BOT Law Variants (9+)	BOT Law
Concession	Special Laws/ Local Ordinance
Joint Ventures	NEDA JV Guidelines/ Local Ordinance
Management and Service Contract*	GPRA/ Local Ordinance
RT, RLT and RTO	Local Ordinance
Lease/ Affermage/ Donation	Civil Code/ Local Ordinance
Divestment/ Disposition	Commission on Audit Circular No. 89-296
Corporatization/ Subsidiary	Corporation Code

Build-Operate-Transfer



Concessions



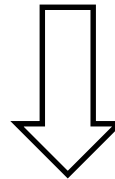
Joint Ventures

Joint Venture Company/ Agreement

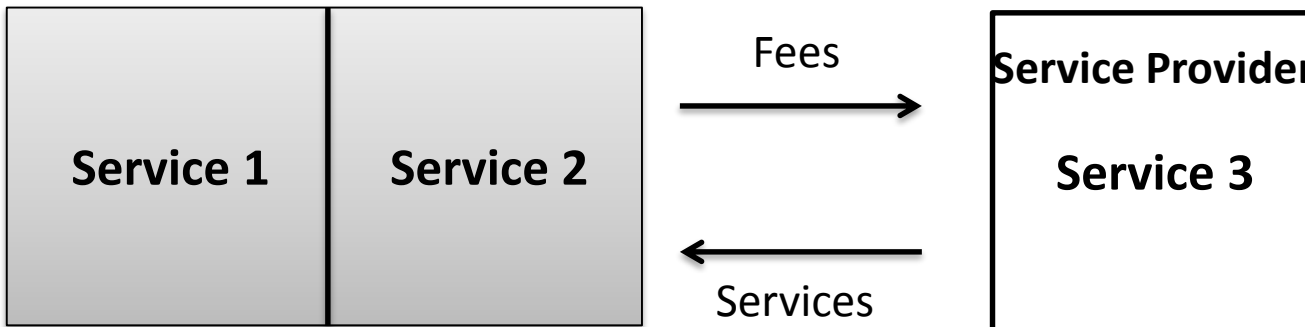


Service Contract

LGU



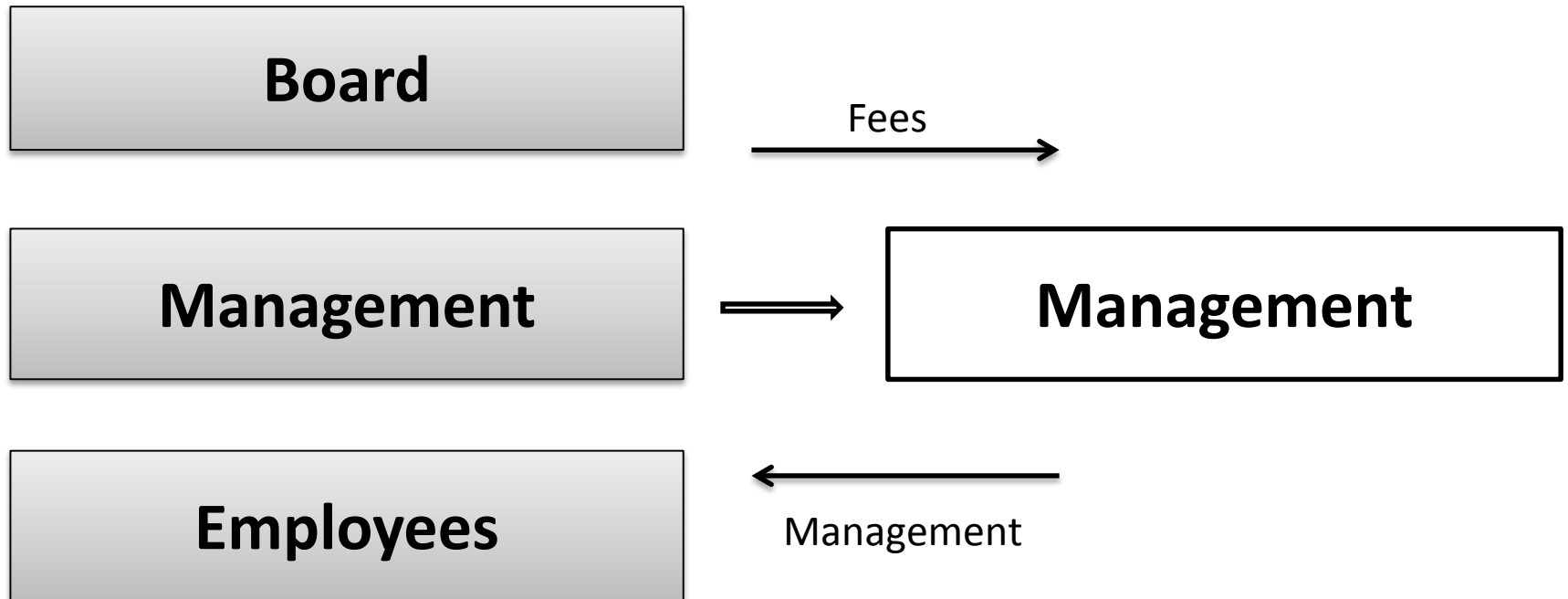
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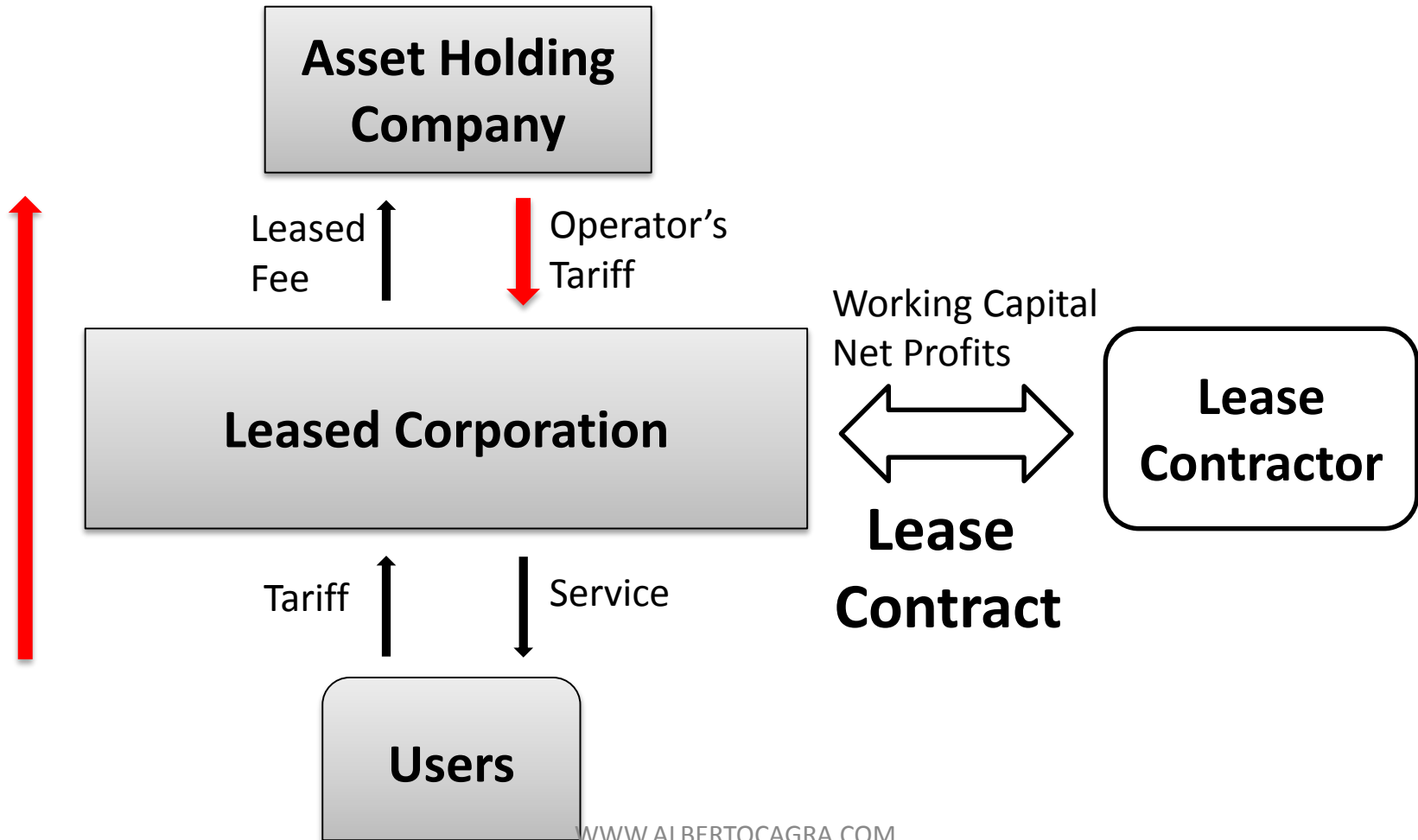
Management Contract

Public Sector

Management Contractor

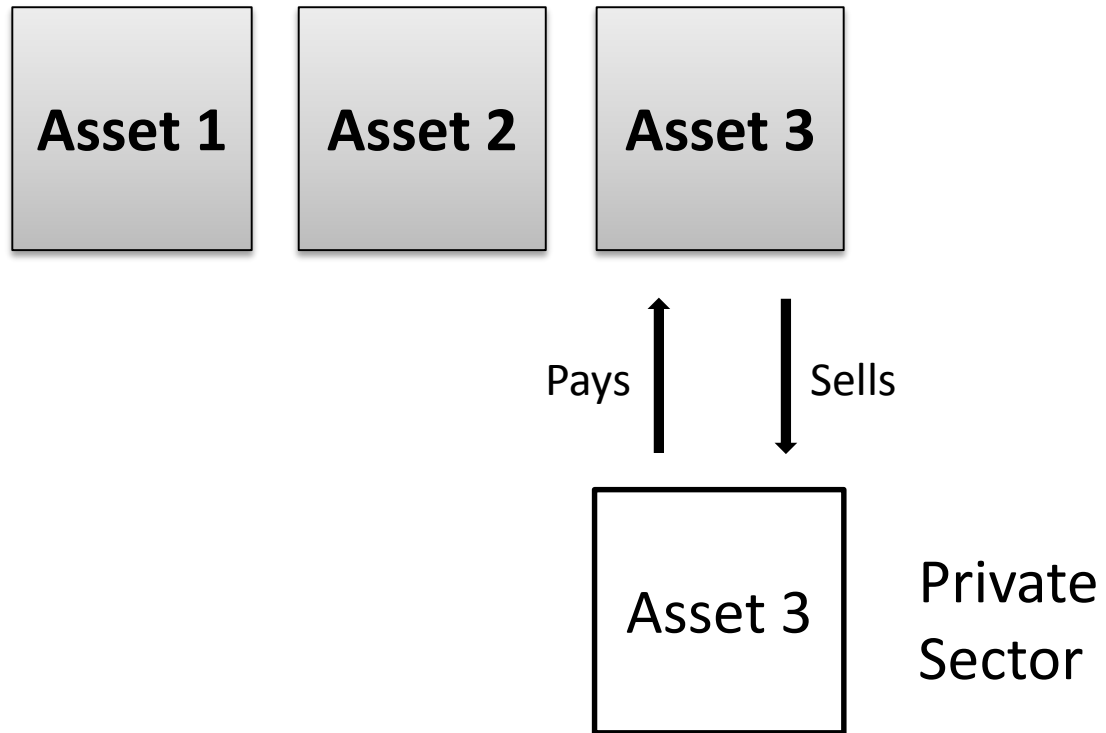


Lease and Affermage

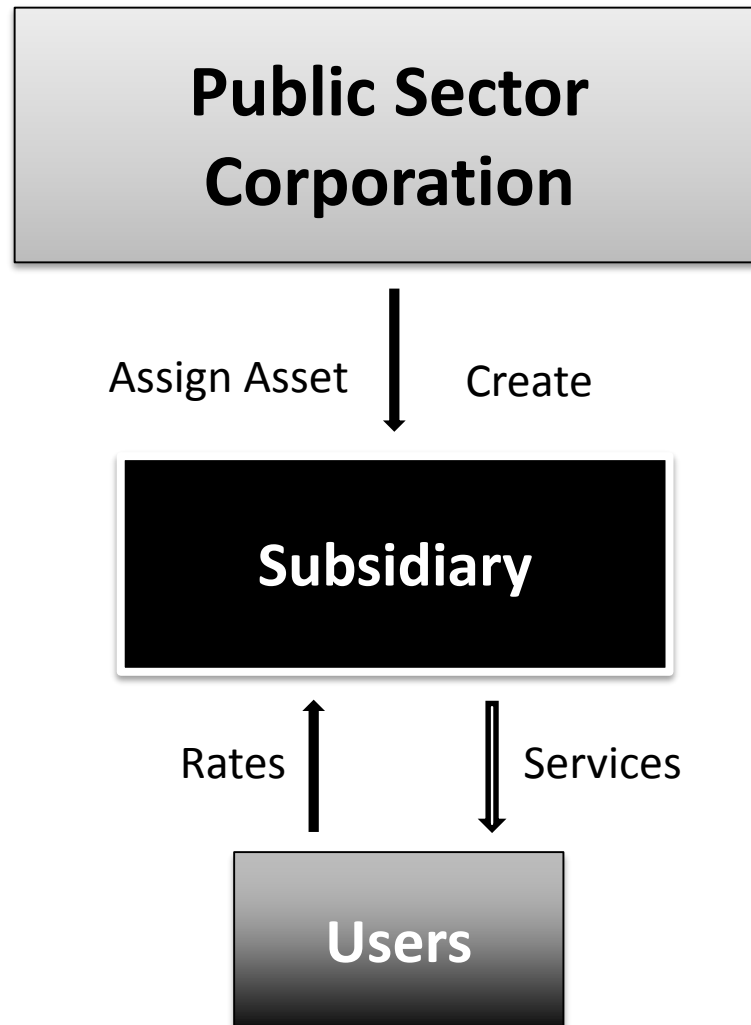


Divestment/ Disposition

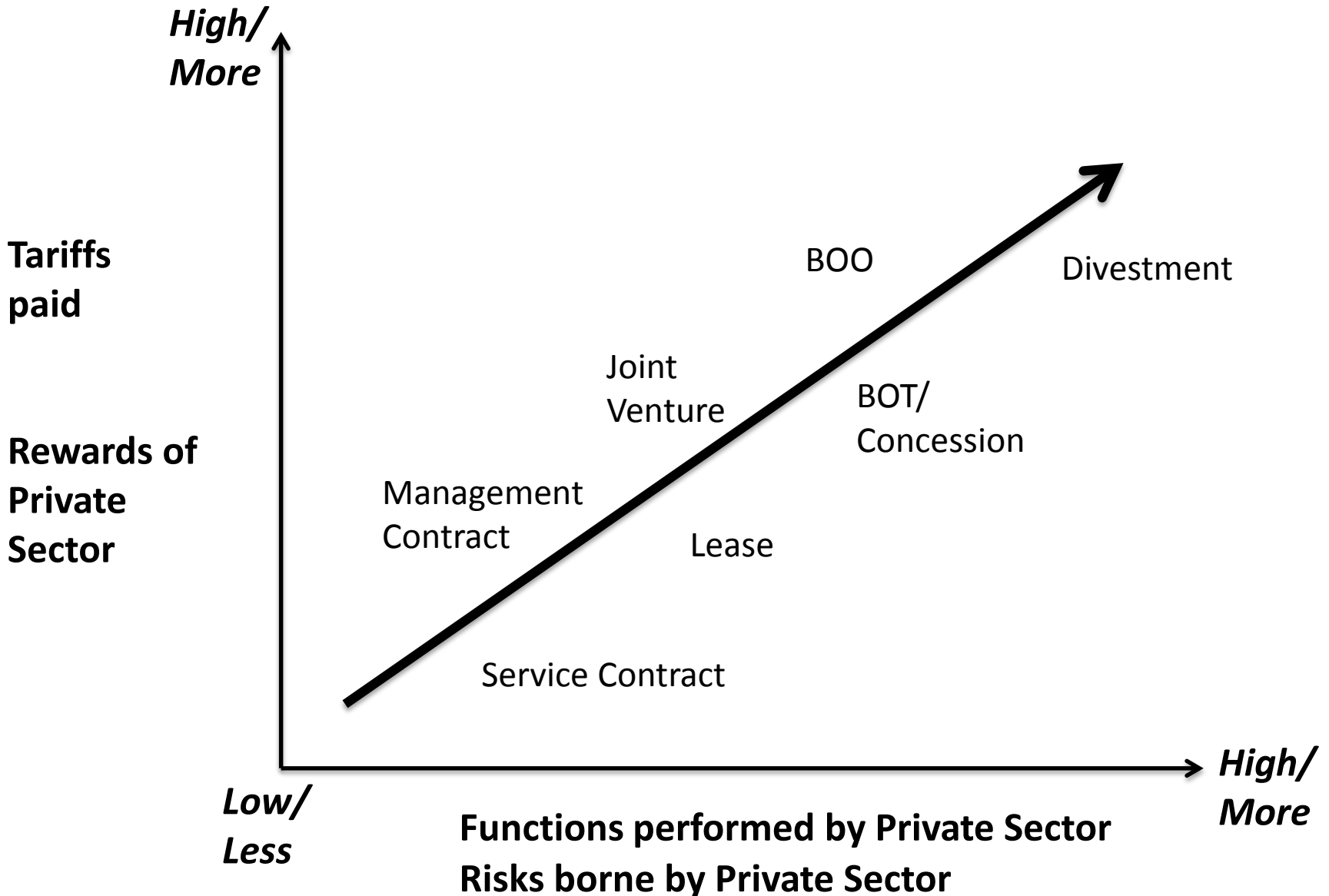
Public Sector



Corporatization/ “Ring-Fencing”



Function-Risk-Costs-Tariff-Reward Relationship



Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Governing Regulation</i>	Law: R.A. 9184 (2003)	Law: R.A. 6957 (1990), amended by R.A. 7718 (1994)	Guidelines/ Rules: 2013 (repeals 2008) issued by NEDA
<i>Application</i>	Applies to all Public Entities (PEs); Exempts from its coverage those projects falling within BOT Law	Applies to all PEs	Limited to GOCCs, GCEs, GICPs, GFIs, and SUCs (NGAs not mentioned; LGUs under own ordinances)
<i>Purpose</i>	Procurement of infrastructure, goods and services within the budget cycle of the PE	Development of infrastructure projects through project finance and other financing modes	Joint undertaking of an investment activity
<i>Functions/ Components</i>	Supplier supplies good, Provider provides services, and Contractor constructs	Components by PSP: designing, financing (unless PE shares), building, rehabilitating, leasing, operating	Joint/ Shared based on proportionate equity/ contribution

Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Variants</i>	1	9 (BT, BOT, BOO, BLT, BTO, ROT, ROO, CAO and DOT) plus others per OP	1
<i>Types of Projects</i>	Goods, Services and Infrastructure	Traditionally, provided by PE	Investment Activity
<i>Specifications</i>	Must be followed by Contractor	Minimum specifications to be followed by PSP; PSP may innovate	Minimum specifications to be followed by PSP; PSP and PE may innovate
<i>Term</i>	In Infrastructure – turnkey upon construction	50 years maximum	50 years maximum

Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Financing</i>	Financed from public sector, use of public funds	Generally, financed from private sector (50% maximum from PE)	Joint financing from PE and PSP
<i>Debt-Equity Ratio</i>	No requirement	75%-25%	50% equity if possible
<i>Ownership</i>	Transfer of Ownership from Private to Public of Procured Goods	Stays with Government (unless BOO or ROO)	Allows take-over by private sector; divestiture is allowed
<i>Price escalation</i>	Prohibits price escalation	Allows price escalation	May allow for escalation in sharing

Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Plan</i>	Annual (or Supplemental) Procurement Plan	Priority or Non-Priority Projects	Priority or Non-Priority Projects
<i>Payment/ Proceeds</i>	PE will pay private entity	Operator/contractor will remit fees to PE	PE and PSP share in the proceeds according to their proportionate ownership (PE may receive share higher than contribution)
<i>Bidding Parameter</i>	Goods and Infrastructure: Cost Service: Responsiveness	Highest revenues, present value, concession fee Least price/ tariff, PE burden, subsidy	Usually, highest revenues to PE (based on gross or net proceeds); more than what PE contributes
<i>PE Contribution</i>	None	Direct Government Guarantee (DGG), Subsidy (DGS) and Equity (DGE) (unless unsolicited), Credit Enhancement, Cost-Sharing, Legal Assistance, Security Assistance and Performance Undertaking	DGE allowed DGG and DGS – DOF/ DBM approvals Cash or non-cash contributions

Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Approvals</i>	PhP500Million: GPPB	National Projects NEDA-Board: more than PhP300Million or Unsolicited NEDA-ICC: up to PhP300Million Local Projects MDC: up to PhP20Million PDC: above PhP20Million to PhP50Million CDC: up to PhP50Million RDC: above PhP50Million to PhP200Million NEDA-ICC: above PhP200Million	PhP150Million PE contribution: NEDA-ICC
<i>Process</i>	Open Bidding; Negotiations in certain cases	Solicited/ Open Bidding or Unsolicited Proposal/ Swiss Challenge	Solicited/ Open Bidding or Unsolicited Proposal
<i>Unsolicited Proposals</i>	---	Not a priority project unless new technology No DGG, DGS and DGE OP status upon acceptance/ stage 1 (exclusionary) Right to Match	Priority or not priority Old or new technology DGG and DGS with DBM/ DOF approvals OP status after negotiations Right to Outbid

Procurement-BOT Law-JV

Aspects	GPRA	BOT Law	JV
<i>Incentives</i>	Prohibits incentives	Provides incentives for large capital investments	PE may provide incentives as contribution
<i>Corporate Vehicle</i>	No need to incorporate a separate Company	Single-Purpose Project Company; As a rule, no PE equity	Incorporated/ JV Company or Unincorporated/ Contractual JV

JV not a BOT Law Variant

Differences

- Community/ Pooling of Resources (JV); not purely private (BOT)
- Active participation (JV); minimum gov't intervention (BOT)
- Proportionality (JV); not distinct assumption of benefits and obligations (BOT)
- LGU contributes (JV); LGU not contribute as a rule (BOT)
- JV Company by Parties (JV); not just by Private Sector (BOT)

Inapplicable Provisions in BOT Law

- Only for Projects traditionally provided by LGU
- Approval Processes (20-50-200 thresholds)
- Debt-Equity Ratio (75-25%)
- Maximum Rate of Return (12%)
- Restrictions on Unsolicited Proposals
 - Priority Projects
 - New Technology
 - Guarantee, Subsidy or Equity

Compare and Contrast

Modality	Nature	Key Objectives	Functions	Term
<i>Service Contract</i>	Provides particular service for a fee	Improve efficiency	Single	2-3 years
<i>Mgt. Contract</i>	Supplies management service for a fee	Install new mgt. systems	Single	2-3 years
<i>Lease</i>	Uses property, runs business where lessee pays a lease fee	Efficient use of asset	Single	7-15 years
<i>BOT</i>	Designs, builds, finances, operates and maintains asset	Innovate, design, build, finance and operate	Bundle	25-50 years
<i>Joint Venture</i>	Pooling of resources in funding, building and O&M	Joint undertaking	Bundle	25-50 years
<i>Concession</i>	Rehabilitates, finances, operates and maintains asset; performance-based	Innovate, design, rehabilitate, fund & operate	Bundle	25-50 years
<i>Divestment</i>	Runs the business and owns asset	Innovate, design, build, finance and operate	Bundle	In perpetuity

Modality	Working Capital	Receives Net Income	Long-Term Financing	Ownership of Asset
<i>Service Contract</i>	Public	Public	Public	Public
<i>Mgt. Contract</i>	Public	Public	Public	Public
<i>Lease</i>	Private	Private	Public	Public
<i>BOT</i>	Private	Private	Private	Public
<i>Joint Venture</i>	Joint based on equity	Joint based on equity	Joint based on equity	Public or Private
<i>Concession</i>	Private	Private	Private	Public
<i>Divestment</i>	Private	Private	Private	Private

Modality	Customer of Private Sector	Revenue Source	Tariff Collection	Risks
<i>Service Contract</i>	Public	Paid per unit of service	Public or Private	Mostly Public
<i>Mgt. Contract</i>	Public	Fixed fee + bonus + salaries	Public or Private	Mostly Public
<i>Lease</i>	End-Users	Revenue – O&M – lease fee	Private	Shared
<i>BOT</i>	End-Users or Public	Capital + Revenue + O&M costs – finance costs – license fee	Public	Mostly Private
<i>Joint Venture</i>	End-Users or Public	Share in revenues	Jointly or Private	Shared based on equity
<i>Concession</i>	End-Users or Public	Revenue – O&M costs – finance costs – concession fee	Private	Mostly Private
<i>Divestment</i>	End-Users	Revenue – O&M costs – finance costs – license fee	Private	Mostly Private

THANK YOU